

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7156

Petition of UPC Vermont Wind, LLC, for a Certificate of)
Public Good, pursuant to 30 V.S.A. § 248, authorizing the)
construction and operation of a 52 MW wind electric)
generation facility, consisting of 26 wind turbines, and)
associated transmission and interconnection facilities, in)
Sheffield and Sutton, Vermont)

Order entered: 4/13/2006

PREHEARING CONFERENCE MEMORANDUM
AND SCHEDULE FOR THE DOCKET

On February 22, 2006, UPC Vermont Wind, LLC, ("UPC") filed a petition, pursuant to 30 V.S.A. § 248, to construct a wind generation facility in Sheffield and Sutton, Vermont. On April 5, 2006, the Public Service Board ("Board") convened a prehearing conference.

Appearances were entered by Andrew Raubvogel, Esq., Geoff Hand, Esq., and Livia de Marchis, Esq., for UPC; John Cotter, Esq., for the Department of Public Service ("Department"); and David Englander, Esq., for the Agency of Natural Resources ("ANR"). Several potential parties stated their interest in intervening in this Docket and were informed that they must file a motion to intervene with the Board by the deadline established in this Order.

UPC and Barbara Ripley, Esq., counsel for two potential parties (Ridge Protectors and Universal Health Services, including its subsidiary, the King George School ("RP/UHS")), each proposed a schedule for the Docket. Several parties and potential parties provided comments on the proposed schedules. Primarily, the comments centered around the schedule proposed by RP/UHS, and we address the major points in the memorandum in support of their proposed schedule below.

RP/UHS state that the proposed project is "unprecedented in size for the State of Vermont," and requires a schedule of longer duration than that proposed by UPC. RP/UHS further contends that UPC's petition is "incomplete and/or not thorough in many respects; accordingly, UHS and RP plan to present a comprehensive case to fill in those gaps and will need

time to prepare that case." In order to fill the alleged gaps in UPC's case, RP/UHS requests that the Board allow sufficient time for parties to be able to conduct winter wildlife studies. RP/UHS also raises concerns regarding the timing of intervention and discovery and contends that parties should not be asked "to invest time and money on discovery before intervention has been decided" Finally, RP/UHS requests that the schedule not include rolling discovery but, instead, set deadlines for two rounds of formal discovery. We address each of these comments in turn.

After consideration of all of the comments received, we adopt the schedule set forth below, which we find is adequate for this project.¹ In doing so, we have attempted to address the concerns of RP/UHS although, as we explain herein, we do not accept all of them. We note that if there is sufficient cause, the schedule can be modified in the future. If the petition is incomplete, UPC incurs the risk that the Board may deny the proposed project or that the schedule may be delayed due to the need for additional information. RP/UHS, if granted party status, may point out any deficiencies of the petition during the proceedings. Additionally, if there is information that the Board determines is needed, we will request UPC to provide such information. At this time, RP/UHS has not made an adequate showing that the schedule should be expanded to allow winter wildlife studies. Such a showing would require, at a minimum, the purpose of the studies, the proposed methodology of the studies, and why the information gleaned from such studies is necessary. Should the Board determine that a party has provided sufficient information on these issues, we would alter the schedule accordingly.

We have set the intervention deadline a full two weeks after the public hearing. We anticipate that there will be potential intervenors who may not learn about the project until that time and we want to ensure that those who wish have the opportunity to intervene. We therefore have established a schedule that provides sufficient time between the deadline for motions to intervene and the first round of prefiled testimony by parties other than UPC. Additionally, the schedule sets forth a process whereby responses to each motion to intervene are due seven calendar days after the motion is filed. The Board will rule upon these motions after the response deadline has passed.

1. For instance, the Board reviewed and ruled upon a 60-mile transmission line project, the Northwest Reliability Project (Docket 6860), in approximately 18 months.

With respect to rolling discovery, the Board's experience is that rolling discovery can be useful for all parties and we will allow it in these proceedings. The response time for discovery is ten business days, and the questioning party must have the responses in hand by that tenth day. If a party would prefer a more orderly discovery process, it can choose its own schedule for filing questions and thus address the concerns regarding rolling discovery raised by RP/UHS.

Members of the public interested in these proceedings do not need to become a party, and go through the intervention process, in order to receive information regarding these proceedings or provide input to the Board. Individuals and organizations can request that they be added to the Board's mailing list as an "interested person," in which case they would receive notices and orders that the Board issues in the case. The public is also encouraged to submit written comments on the project electronically or via regular mail. While these comments do not become part of the evidentiary record (under Vermont law the Board's decision must be based upon the evidence presented by formal parties during the evidentiary hearings), public comments play an important role by raising new issues or offering perspectives that the Board should consider and ask parties to present evidence on.

If a group or organization does choose to provide more active participation than providing comments or receiving notice of the proceedings, they may file a motion to intervene in this Docket. In making such a motion, the group or individual must demonstrate that they have a substantial interest which may be adversely affected by the outcome of the case, and address the requirements of Board Rule 2.209. Intervenors have the same obligations, in addition to the same rights, as the other formal parties, including the requirement that parties follow the Board's procedural rules. In addition, potential intervenors should be aware that there are costs involved in being a party in a docket such as this, both as to time and money, and these costs can be substantial. An intervenor may provide testimony and participate in the evidentiary hearings and will be subject to the rules governing discovery and cross-examination. Individuals or groups that appear pro se (without the assistance of counsel) have most of the same responsibilities and rights of an attorney. For further information regarding intervention, providing public comments, and becoming an "interested person," please consult the *Citizens Guide to the Vermont Public*

Service Board's Section 248 Process, available on the Board's website at www.state.vt.us/psb or available from the Board in hard copy.

The Board raised the prospect of conducting a discovery workshop during the next few months. There appeared to be some interest in this concept. At this time we do not include such a workshop in the schedule as it would be more efficient to develop the concept more fully before implementation. In order to expedite this process, we request that parties file comments on what topics should be covered in the workshop, for example, aesthetics or wildlife issues. Additionally, we ask that parties provide suggested dates for when the workshop should occur. The Board will consider this issue and provide additional information in the near future.

Finally, UPC raised the issue of requiring electronic filing in this Docket. We decline to establish a formal process for electronic filing at this time. Parties may work among themselves to decide whether they wish to receive only electronic versions of all documents, only hard copies of all documents, or a combination of electronic and hard copies of certain documents. However, any such arrangements are voluntary; if a party does not have the capability to easily receive or send electronic versions of documents, there is no requirement that they do so. For the Board's purposes, parties need to file only one copy of all discovery correspondence with the Board and an original and six copies of all other filings. Electronic filings with the Board, in addition to the hard copies, are also requested, to the extent possible, particularly for testimony, exhibits, and briefs.

SCHEDULE

Public Hearing	April 25, 2006
Site Visit	Date to be determined
Deadline for Motions to Intervene	May 9, 2006, with responses due seven calander days after each motion is filed
Discovery on Petitioner	rolling through July 5, 2006, with responses due within 10 business days
Other parties file Direct Testimony	July 24, 2006

Discovery on Other Parties	Rolling through September 8, 2006, with responses due within 10 business days
UPC files Rebuttal Testimony	September 25, 2006
Discovery on UPC Rebuttal Testimony	Rolling through October 23, 2006, with responses due within 10 business days
Second Site Visit	If needed, date to be determined
Other Parties file Surrebuttal Testimony	November 13, 2006
Discovery on Surrebuttal Testimony	Responses by November 27, 2006
UPC files request for live surrebuttal (if any)	November 22, 2006
Technical Hearings	December 4 – December 15, 2006
Initial Briefs	January 26, 2007
Reply Briefs	February 9, 2007

SO ORDERED.

Dated at Montpelier, Vermont, this 13th day of April, 2006.

s/James Volz_____)

) PUBLIC SERVICE

s/David C. Coen_____)

) BOARD

s/John D. Burke_____)

) OF VERMONT

OFFICE OF THE CLERK

FILED: April 13, 2006

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)